

In this section of the Analysis of Impediments report, past and future action steps to affirmatively further fair housing pursuant to fair housing laws, are evaluated and discussed respectively. DHCD is committed to affirmatively further fair housing in Massachusetts for all persons protected under fair housing laws. The recommendations of this section were guided by the Data Analysis findings, contemporary research, and the recommendations of the Fair Housing Advisory Panel.

1. Inadequate Enforcement of Fair Housing Laws Persist, and There is Not Sufficient Education About Fair Housing Throughout the Housing Delivery System.

In spite of statutorily authorized fair housing enforcement entities and fair housing requirements imposed throughout the housing delivery system upon developers, governmental agencies, local permit granting authorities, marketing agents and real estate professionals, noncompliance, overt discrimination, and actions which have discriminatory impacts persist. Leadership relative to fair housing is essential.

The FHAP recommended that DHCD and its partners should continue to heighten awareness of fair housing through education of staff and throughout the housing delivery system. Technical expertise exists in many facets of fair housing (including the laws, responsibilities of landlords and management companies, real estate agents, lenders, as well as accessibility requirements) but there is no standardized educational tool available. It further recommended that DHCD should review existing training and develop a uniform standard, or provide examples of materials that delineate fair housing roles, responsibilities, and recourse.

Action Step: provide education on fair housing laws and incorporating fair housing principles into DHCD's programs and activities

1. *Increase DHCD staff knowledge of fair housing laws and obligations*

As a state agency, DHCD has a limited but key role in furthering fair housing. One of the ways in which DHCD can effectuate change is through the way its staff communicates and emphasizes fair housing to its partners. This can only happen if there is adequate training of DHCD staff and the staff of DHCD administered programs regarding fair housing obligations and affirmative duties using up-to-date analysis of data. Fair housing training for rental subsidy programs should include an emphasis on fair housing occupancy standards as well as reasonable accommodations, modifications, and accessibility obligations for disabled persons. It should include discussion of DHCD's Fair Housing Mission Statement and Principles and how to incorporate them into the state's subsidized housing programs.

2. *Facilitate education for community stakeholders on fair housing laws, including predatory lending practices and housing discrimination against mobile voucher holders*

With the increased training described above, DHCD can facilitate the education of community stakeholders on fair housing laws. This may be achieved by partnering with other agencies and organizations. Fair housing violations that are more subtle and/or less likely to be perceived as illegal should be emphasized in educational outreach. For example, stakeholders should be made aware of the illegality of discrimination based on familial status¹ and receipt of public assistance under Chapter 151B. Furthermore, homebuyers, housing providers, and municipalities should be made aware of fair housing violations such as steering, blockbusting, redlining, and other unfair or deceptive lending practices that may have a disproportionate impact on racial/ethnic minorities and other protected groups. This education is essential to mitigating discriminatory rental and sales practices that are creating inequity in housing opportunities and costs, particularly in communities with substantial minority presence and in communities where people of color are under-represented. Awareness of legal resources for fair housing violations should also be promoted. The Legal Framework in Section 1 of this document provides a background on legal recourse for housing discrimination.

2. There Exists a Persisting Lack of Knowledge Regarding the Housing Rights of People with Disabilities, and Ongoing Segregation and Stigmatization of People with Disabilities.

The FHAP noted that there is not a centralized position which maintains information on housing rights for people with disabilities. [Author's Note: all program staff administer state programs in accordance with the fair housing laws, and specialized programs do exist to address the special housing needs of persons with disabilities. In addition, www.massaccess.com provides a housing registry of affordable housing opportunities that are accessible to persons with disabilities. DHCD supports the ongoing development of MassAccess]. The FHAP further noted that segregated housing models and group homes dominate the current market, that transportation and sidewalks are necessary components to housing people with disabilities, and that smart growth encourages re-use which may pose a challenge to developing integrated housing.

¹ *Do We Know More Now?: Trends in Public Knowledge, Support and Use of Fair Housing Law*. U.S. Department of Housing and Urban Development. February 2006 (finding that, inconsistent with published testing results, only 4% of survey respondents representing individuals in households with children (n=404) perceived discrimination with familial status as the basis, contrasted with 9% of disabled persons perceiving discrimination with disability as the alleged basis, 9% of Hispanics perceiving discrimination with race/ethnicity as the alleged basis, and 22% of African Americans (n=410) perceiving discrimination with race/ethnicity as the alleged basis).

The FHAP recommended that DHCD should include in its fair housing technical assistance information and educational tools that relate specifically to housing for people with disabilities. It further recommended that DHCD promote integrated housing to meet a diversity of housing needs, and particularly, require that a diversity of housing is required under MGL c. 40R. [Author's note: The regulations to MGL Chapter 40R were developed contemporaneously with the recommendations of the FHAP, and those regulations (which mirror the statute) require that MGL Chapter 40R smart growth zoning districts allow a diversity of housing by right.] The FHAP further recommended that DHCD support universal design and visitability standards and reinforce all accessibility and visitability requirements in new construction and rehabilitation projects, including those selected for development or re-development in smart growth locations. And while smart growth does encourage the re-use of existing buildings, all such buildings must comply with accessibility standards. The FHAP recommended that DHCD continue to support targeted funding streams that create and improve accessible and special needs housing.

Action Step: Incorporate materials on the rights of disabled persons in fair housing education and continue to support housing for disabled persons that is integrated and located in areas that are accessible to and serve the needs of disabled persons

DHCD will include in its fair housing technical assistance information and educational tools that relate specifically to housing for people with disabilities. Additionally, state financing and incentive allocations for new construction and rehabilitation projects should and do take into account the needs of disabled persons. DHCD and its state and quasi-public agency partners will ensure accessibility as provided by law in all publicly funded housing, thereby providing access to integrated housing in all communities for persons with disabilities. Programs that administer and provide for the development of subsidized housing should notify physically and mentally disabled persons of opportunities with respect to integrated housing. In *Olmstead v. L.C.* the Supreme Court ruled that to avoid unlawful discrimination under Title II of the ADA, states must provide community-based services, where appropriate and reasonable, for persons with mental disabilities otherwise entitled to institutional services.² As a basis for its decision, the court relied on the ADA provisions requiring public entities to refrain from discrimination and specifically identifying "segregation" of disabled persons as a form of discrimination.³

² 527 U.S. 581 (1991) (holding such placement in community settings must occur when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities).

Although DHCD sought to improve housing choice for disabled persons even prior to the *Olmstead* decision through a number of programs, it continues to expand such opportunities in collaboration with its partners. It administers programs for disabled persons that involve mobile vouchers, such as the state funded Alternative Housing Vouchers Program (AHVP), and the federally funded Section 8 Housing Choice Voucher/Mainstream Housing Program and the Section 8 Housing Choice Voucher/Designated Housing Programs, that enable disabled persons to select housing location. Pursuant to state regulation, local housing authorities must provide priority to AHVP participant applicants, otherwise eligible and qualified, living in a non-permanent transitional housing subsidized by AHVP.⁴ DHCD and its partners will continue to conduct reviews and make recommendations with respect to the funding and optimization of federal and state voucher programs, as well as community resources for disabled voucher holders.⁵ Thorough, ongoing review is of particular relevance to disabled voucher holders and applicants, as the disabled population is disproportionately extremely low income and faces substantial rental market barriers even with voucher assistance.

DHCD also administers the Community Based Housing (CBH) program, which administers loans to non-profit developers and owners that create long term integrated housing for disabled persons that are institutionalized or at risk of being institutionalized, with incomes at or below 80% of the area median income. Funding in 2006 for the CBH program was close to \$3.0 million dollars. Additionally, the state Affordable Housing Trust Fund provides a funding preference for housing that serves disabled persons, and an additional \$2.0 million dollars was made available exclusively for housing for persons with disabilities in 2006.

Additionally, DHCD administers state funds targeted for disabled persons, such the Facilities Consolidation Fund that finances community-based housing for clients of the Departments of Mental Health and Mental Retardation, and Chapter 689 special needs housing for persons with physical disabilities, mental illness, or mental retardation. Based on need and funding capacity, DHCD administered housing will continue to include units that are affordable to persons with low, very low, and extremely low incomes, and that are located near services that enable physically and mentally disabled persons to equally enjoy their environment.

³ Id.

⁴ 760 C.M.R. 5.09.

⁵ For example, in 2007, pursuant to the federal “Money Follows the Person” initiative, states may apply to CMS to seek federal matching funds to assist institutionalized disabled persons seeking services as they move out into the community.

“Universal design” denotes the principle of designing units that are livable for most people regardless of ability or disability. For example, switches and controls that are placed to be reachable by disabled persons, or adjustable closet rods and shelves, are features of universal design. “Visitability” refers to the principle that housing units have sufficient accessibility in common areas for disabled persons in wheelchairs and mobility devices to visit. Visitability includes features such as zero-step entrances, at least half a bath on the main floor, and interior doors with passage space. Although universal design and visitability are not required by fair housing laws, they are encouraged for the purpose of economic efficiency (particularly for subsidized housing units that may require modification), safety, and equal housing opportunity and enjoyment. CBH currently supports design preferences for developments that promote universal design and visitability.

3. Affordable, Accessible Units may be Occupied by Households Which Do Not Require Accessible Features

Evidence indicates that subsidized accessible units are sometimes occupied by households which do not require accessible features, and further, that there is lack of knowledge of available units by households which do require accessible features.

The FHAP recommended that DHCD and its partners in the housing delivery system should ensure that all people searching for accessible units are informed of availability of such units. In addition, lease addenda must be employed to ensure that occupants of accessible units will be relocated to serve eligible tenants requiring an accessible unit.

Action Step: Evaluate performance of local housing authorities and regional housing agencies on their effectiveness in finding and providing appropriate housing for disabled persons, as well as for families with children

Due to the significant number of disabled households with extremely low incomes, DHCD evaluates the availability of subsidized housing units for disabled households, as well as the use of handicap accessible units by non-disabled households. Continuous evaluation of local authority and regional housing agency efforts to curtail the use of handicap accessible units by non-disabled households is needed and is ongoing. DHCD has a long-standing written policy requiring lease addenda for non-disabled households occupying accessible public housing units to be executed. The lease addenda require the non-disabled household to be relocated if a household requiring accessible features seeks the unit. DHCD should also continually monitor the programs it administers to ensure that disabled persons are aware of opportunities to find housing that accommodates their needs. Such needs include housing that contains physical and

communication access, and housing that is located near services that ameliorate the consequences of physical and mental disabilities.

Currently, the Massachusetts Access Accessible Housing Registry provides disabled persons significant assistance in finding available rental housing in Massachusetts. The MassAccess database primarily tracks accessible and affordable apartments throughout the Commonwealth. It is available online at www.chapa.org and is distributed via a computer network to Independent Living Resource Centers across Massachusetts. As reported by CHAPA, in 2005 MassAccess tracked the availability of more than 2,500 developments in Massachusetts, including nearly 13,000 accessible apartments, listed over 800 vacancies, and received approximately 3,000 visits to its website per month.⁶

4. There is a Paucity of Data on Occupants of Subsidized Housing

Data on affordable housing and its occupants is collected and analyzed inconsistently among programs, and data are not currently aggregated. In order to inform future decisions about the need for affordable housing opportunities by type and location, it is important to analyze the type of households served within particular existing developments, and within a geographical context to determine whether fair housing objectives are being met, or whether segregation is exacerbated. Thus, it is important to collect fair housing related demographic and socioeconomic data for subsidized housing developments and other housing assistance programs and analyze that data prior to making funding decisions to ensure fair housing goals are being achieved. Such analysis is an integral tool in deconcentrating poverty and promoting diversity, mobility, housing choice, and opportunity.

The FHAP recommended that DHCD and its partner agencies should collect data consistently among all programs in order to analyze the impact of public subsidy in achieving fair housing objectives. The results of such data analysis should be incorporated into funding decisions in order to direct financial resources to projects that promote fair housing.

Action Step: Collect, analyze, and report on relevant data pertaining to racial/ethnic minorities and other protected classes in subsidized housing programs and report on DHCD fair housing initiatives

⁶ Citizens' Housing and Planning Association Annual Report 2005. <http://www.chapa.org/pdf/annualreport05.pdf>.

DHCD has developed a database that includes fair housing data for new housing developments which are constructed with public subsidy. Furthermore, October 2006 legislation requires annual reporting on data collected subsequent to the enactment date, as well as the methodology used, with the first report due to the legislature on or before December 31, 2007 and annually thereafter. Said data will include: the number, location, and type of assisted housing units; the source and term of any and all state or federal subsidy for such housing units; the size of households in such housing units; income levels for such households in such housing units; the number of bedrooms per housing unit; unit accessibility for persons with disabilities; the race and ethnicity of the head of household in such housing units; and, the number of children under 18 years of age and under 6 years of age in such housing units. Pursuant to the legislation, DHCD shall use reasonable efforts to collect data upon turnover, rent re-determination or resale of housing units before the enactment date. Although the legislation requires DHCD to report to the legislature annually, data collection and reporting is required for all state and federal housing subsidies, and as such, DHCD is collaborating with its partner agencies to create an integrated, consistent reporting mechanism that will lend itself readily to data analysis across programs and subsidy types. This data will inform subsidizing agencies on current residential demographic characteristics in statewide housing programs. It will enable us to identify the existence of racial/ethnic segregation, to limit and redress that segregation, and to inform decision-making regarding future housing development.

The aforementioned data is necessary to ascertain whether all available subsidized housing resources serve Commonwealth residents equitably, and whether subsidized housing programs are deconcentrating minority and poverty concentrations, promoting racial and socioeconomic integration, and affirmatively advancing fair housing access for all protected classes under state and federal fair housing laws.

With respect to planning future development, analysis of data on selected neighborhood residential characteristics such as race, ethnicity, and income is necessary to determine whether both poverty and minority concentrations in those neighborhoods will be exacerbated by low income development. HUD and the U.S. Census Bureau have provided statistical standards for assessing segregation in several of its programs. HUD defines an "area of minority concentration" as an area where the percentage of minority residents "substantially exceeds" the total minority population of the jurisdiction.⁷ HUD also established a $\geq 30\%$ minority population standard for finding neighborhood segregation under its HOME and CDBG programs, and a $\geq 20\%$ minority population standard for finding neighborhood segregation under its HOPE VI program.⁸ The U.S.

⁷ Id. (citing *Civil Rights Monitoring Handbook*, Appendix 8).

⁸ Id. (citing *HOPE VI Guidebook* (Office of Public Housing Investments, 1997) at page 5.C.15; HUD Notice H-2003-16, *Fiscal Year 2003 Policy for Capital Advance Authority Assignments, Instructions, and Program*

Census Bureau has devised five categories of racial segregation: evenness (of the minority distribution within a geographical area), concentration (of minorities in a particular area), centralization (of minorities around an urban core), and clustering (or high density of minorities in adjoining areas), for statistical analysis.⁹

In addition to utilizing minority concentration and segregation data to inform future low income development, data on poverty concentration should also be considered. HUD has considered a greater than 20% poverty rate as too high in poverty for future site selection of Section 8 project based housing.¹⁰

5. There is a Lack of Capacity Within State Government to Address Fair Housing Issues

There does not exist a centralized position within DHCD or other state agencies dedicated exclusively to fair housing, and thus it would be beneficial to develop more expertise and centralized information for easier public access and delivery.

The FHAP recommended that DHCD should advocate for funding to establish a Fair Housing Ombudsman position, and consistently incorporate fair housing principles in all of DHCD's programs and activities.

Action Step: continue to incorporate fair housing principles in DHCD's programs and activities

At the time the FHAP made this recommendation, no such centralized position existed. However, in July 2006, DHCD hired a Fair Housing Specialist to: perform duties to analyze impediments to fair housing; draft an implementation plan for incorporating fair housing principles into DHCD programs and activities, subject to input from the Fair Housing Advisory Panel; and to analyze implementation of the plan. Fair Housing principles will also be incorporated into our programs and technical assistance and outreach will be increased using existing staff capacity. In addition, DHCD will develop internal trainings so that program staff are better educated relative to fair housing issues and can improve program delivery relative to fair housing. Concurrently with the

Requirements for the Section 202 and Section 811 Capital Advance Programs, Application Processing and Selection Instructions, and Processing Schedule (July 17, 2003)).

⁹ Id. (citing *Racial and Ethnic Residential Segregation in the United States: 1980-2000*. U.S. Census Bureau. (2002).

¹⁰ Tegeler, Philip D. "The Persistence of Segregation in Government Housing Programs." 2005. In *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*, edited by Xavier de Souza Briggs, pp. 197-216. Washington, D.C.: Brookings Institution Press (citing "Revisions to PHA Project-Based Assistance Program; Initial Guidance," 66 Fed. Reg. 3605, 3608 (January 16, 2001).

annual report on fair housing data collection to the legislature, the fair housing specialist will issue a report on the progress made and initiatives undertaken to operationalize the plan and to affirmatively advance fair housing access throughout the commonwealth.

6. Restrictive Local Zoning Frustrates the Ability to Achieve Fair Housing Objectives and Benefits Throughout Massachusetts.

Restrictive local zoning requirements such as large lot requirements and the prohibition of multifamily housing increases the cost of such housing, particularly in more affluent communities, where lower-income families could benefit from better schools and services.

The FHAP recommended that DHCD should increase capacity and develop a long-term strategy beginning with education that evolves into a system of incentives and penalties. Notably, fair housing compliance and allowance of diverse housing developments is required under Chapter 40R, the Smart Growth Zoning law. DHCD should develop incentives and outreach to promote dense and diverse housing development, particularly under Chapter 40R.

Action Step: Promote fair housing access by reducing regulatory barriers to, and creating incentives for, regional equity in affordable housing

1. *Continue promotion of Chapter 40B, Chapter 40R, inclusionary zoning, smart growth, and fair housing principles as tools for engendering equal housing opportunities throughout Massachusetts*

Policies such as inclusionary zoning, affordable housing development, and smart growth¹¹ development are important tools for furthering fair housing in Massachusetts by broadening housing opportunities for disadvantaged groups and by weakening barriers to desegregation at the regional, city/town, and neighborhood level. Land use regulations can be inclusive of minorities, disabled persons, and other groups that are disproportionately low income and/or disadvantaged in the housing market by increasing housing affordability (i.e., through infrastructure efficiency and housing density) and access to public transit, jobs, schools, hospitals, and by decreasing proximity to health and safety hazards.¹²

¹¹ A principle of land development that promotes compact design, mixed and fair land use, open space, environmental preservation, and transportation access.

¹² Pendall, Rolf, Nelson, Arthur C., Dawkins, Casey J., and Gerrit J. Knapp. "Connecting Smart Growth, Housing Affordability, and Racial Equity." In *The Geography of Opportunity: Race and Housing Choice in*

A variety of Massachusetts policies have reduced zoning barriers, creating more affordable housing, and promoting smart growth. For example, the Massachusetts Comprehensive Permit Law, Chapter 40B was enacted in 1969 to help address the shortage of affordable housing in Massachusetts and to encourage the production of affordable housing in all communities in the Commonwealth by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions. Chapter 40B permits the development of affordable housing throughout the Commonwealth, superseding local zoning laws, when less than 10% of the community's housing stock is restricted to low or moderate income households, or when less than 1.5% of the municipality's total land area zoned for residential, commercial, or industrial use is composed of low and moderate income housing.

A condition for qualifying as a 40B development is that the housing be comprised of at least 25% of units affordable to household at or below 80% of the area median income, or 20% of units affordable to households at or below 50% of the median income. Qualified Chapter 40B housing must be deed restricted. If the local zoning board rejects the plan or imposes economically burdensome conditions, the developer may appeal to the State Housing Appeals Committee, which in turn assesses whether the denial or conditions are "consistent with local needs."¹³

Furthermore, communities are encouraged to proactively ensure affordable housing under Chapter 40B by engaging in "planned production" pursuant to 760 C.M.R. 31.07. Municipalities may participate in planned production by submitting an affordable housing plan to DHCD and producing housing in accordance with the plan. The key requirement of the affordable housing plan, before it can be approved by DHCD, is that it must include housing for a diverse population, including rental and home ownership opportunities for individuals, families, the elderly, and persons with disabilities. Generally, when at least 0.75% of year round housing units are produced within one calendar year, the municipality may request certification, and certification enables a local zoning board of appeals decision to be upheld by the Housing Appeals Committee.

Metropolitan America, edited by Xavier de Souza Briggs, pp. 219-246. Washington, D.C.: Brookings Institution Press.

¹³ General Laws c. 40B, § 20 defines "consistency with local needs" as being reasonable in view of the need for low and moderate income housing balanced against health, safety, environmental, design, open space, and other local concerns. There is a presumption that the need for affordable housing outweighs local concerns if less than ten percent of municipality's total housing units are subsidized low and moderate income housing units. See 760 CMR 31.07(1)(e); Board of Appeals of Hanover v. H.A.C., 363 Mass. 339, 367, 294 N.E.2d 393, 413 (1973).

Thus far, Chapter 40B has produced a significant number of affordable housing units for households below 80% of the median income: approximately 43,000 units (31,000 rental units and 12,000 homeownership units) in approximately 736 developments Massachusetts.¹⁴ Over the past five years, 82% of new production of affordable housing in municipalities at or below the 10% threshold is attributable to Chapter 40B, and over the past three years, approximately 30% of all housing production was attributable to Chapter 40B.¹⁵ As of June 1, 2006, 48 communities in Massachusetts had at or above 10% of its housing subsidized.¹⁶ Narrowing DHCD's most recently updated subsidized housing inventory to the selected locations in the Data Analysis section of this report, the share of subsidized housing units was 19.3% in Boston, 15.8% in Cambridge, 10.4% in Fitchburg, 10.2% in Framingham, 21.2% in Holyoke, 14.8% in Lawrence, 13.3% in Lowell, 17.3% in Springfield, and 13.5% in Worcester.¹⁷

Despite these numbers, Chapter 40B alone cannot foster widespread and sufficient affordable housing. Local zoning bylaws and regulations that mandate or offer strong incentives for the development of affordable housing stock are necessary throughout the Commonwealth, and are particularly necessary in high cost and low poverty areas. Boston has adopted an Inclusionary Development Policy, created in February 2000 by executive order, which requires that 13% of all units in a housing development of 10 or more units be comprised of one-half "moderate income" (80% AMI) households, and one-half "middle income" (120% AMI) households. To offset the economic burden on developers, the policy provides for increased density and other incentives, and enables developers to opt for offsite construction or cash-out fee alternatives. As of February 2005, 606 units were created as a result of Boston's Inclusionary Development Policy.¹⁸

Municipalities employ inclusionary zoning must be careful to stay within the constitutional confines of due process, equal protection, and just compensation for

¹⁴ *Fact Sheet on Chapter 40B the State's Affordable Housing Zoning Law*. Citizens' Housing and Planning Association. January 2006.

¹⁵ *Id.*

¹⁶ *Analysis of the 2005 Subsidized Housing Inventory*. Citizens' Housing and Planning Association. January 18, 2005.

¹⁷ Massachusetts Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory. June 1, 2006.

¹⁸ For further information, see *Building Better: Recommendations for Boston's Inclusionary Policy*. Massachusetts Association of Community Development Corporations. May 2006.

regulatory takings.¹⁹ Thus, educational outreach to municipalities is needed to provide viable models of mandatory inclusionary zoning. To this end, Massachusetts Housing Partnership has commissioned three reports on this topic, which may be accessed at : http://www.mhp.net/housing_library/inclusionary_zoning.php

Communities that do not wish to adopt inclusionary zoning should be educated as to fair housing access and offered financial incentives for smart growth development that is consistent with fair housing principles. Communities must continue to be introduced to successful models of “smart growth”²⁰ and informed as to state financing opportunities for the development of affordable housing. For example, Massachusetts General Laws Chapter 40R provides discretionary funding when communities adopt smart growth zoning districts, and again when they provide permits for housing that is affordable (to households below 80% of the area median income) in 20% or more of the units for at least 30 years. Unlike sprawl development, smart growth protects natural resources, broadens housing choice, and improves municipal finances by taking into consideration location, design and long-term costs. DHCD offers a Smart Growth Toolkit on its website (<http://www.mass.gov/dhcd/components/SCP/default.htm>) to assist municipalities in assessing their development options.

Additionally, the Commonwealth of Massachusetts has adopted ten Principles of Sustainable Development²¹ that embrace smart growth. DHCD's Commonwealth Capital

¹⁹ Kayden, Jerold S, *Inclusionary Zoning and the Constitution*; Blaesser, Brian W., *Inclusionary Housing: There's a Better Way*. National Housing Conference Policy Review, Vol. 2, Issue 1. January 2002.

²⁰ See infra note 24.

²¹ 1) **Redevelop First:** revitalizing existing neighborhoods doesn't require expensive new infrastructure or consume forest and fields and finds new uses for historic buildings and underutilized brownfield sites; 2) **Concentrate Development:** compact development conserves land and fosters vibrant and walkable districts. According to the Lincoln Institute, more compact development could save the public sector in the Northeast \$40 billion over 25 years; 3) **Be Fair:** the benefits and burdens of development should be equitably shared by all. Transparent and predictable permitting will result in cost-effective and fair outcomes; 4) **Restore and Enhance the Environment:** the conservation, protection, and restoration of water, land, and cultural resources provides a high quality of life and ecological health; 5) **Conserve Natural Resources:** renewable energy and efficient use of building materials and water contribute to a healthier environment, limit waste, and are cost-effective; 6) **Expand Housing Opportunities:** expanding the number, affordability, and diversity of housing units will ensure that people of all abilities, income levels, and ages have appropriate housing options; 7) **Provide Transportation Choice:** opportunities for public transit, walking, and biking should be expanded; 8) **Increase Job Opportunities:** connecting people with jobs in their communities and close to homes and transportation infrastructure will expand our economy; 9) **Foster Sustainable Businesses:** great potential exists for new innovative industries and for resource-based industries to contribute to the social, economic, and environmental health of our state; 10) **Plan Regionally:** economic development, water, transportation, and housing are regional in nature they don't stop at the town boundary. Regional planning recognizes this and results in inter-municipal coordination and better outcomes.

program provides an advantage to communities when they apply for certain discretionary bond funded programs if their land use policies promote sustainable development.

2. *Provide funding priorities to municipalities that advance fair housing access*

DHCD will continue to implement incentives for municipalities to incorporate fair housing principles into their housing and development policies. For example, Commonwealth Capital funding priorities are given to community programs that adopt: affirmative marketing plans; bylaws creating fair housing ordinances and fair housing commissions; fair housing education and outreach; promotion of handicap accessibility and universal design; and/or actions to monitor local compliance with the Community Reinvestment Act (CRA) and the Equal Credit and Opportunity Act (ECOA). The CRA and ECOA promote fair housing access and benefit communities by improving homeownership and housing related credit opportunities for those in underserved low-income and minority areas.

3. *Foster partnerships between affordable housing programs, land conservation groups, and developers as a means for improving regional housing equity*

In an effort to increase affordable housing opportunities in suburban areas, DHCD will continue to promote partnerships between land conservation, affordable housing, and developer groups by creating networking opportunities and assisting in the funding of development. On an ongoing basis, DHCD undertakes outreach directed at said groups as well as at municipalities, which includes the provision of successful models of affordable housing in communities desiring to protect open space.

7. The State Education Funding Formula Creates a Disincentive to Allow for Increased Housing Growth in Massachusetts Communities.

Due to the nature of the education funding formula, some communities have level education funding regardless of changes in local school district enrollment. Accordingly, there is a perception at the local level that housing development significantly increases school costs paid by local residents.

The FHAP note that It is incumbent on DHCD to create an awareness of the connection between education funding and barriers to housing development, and to dispel misconceptions concerning the incremental increase in operating costs attributable to increased school enrollment. Addressing capital costs when new schools are needed is an important priority. DHCD must continue to work with its quasi-public partners, non-profit organizations, the private sector, and local officials to preserve all currently

affordable housing to the fullest extent possible.

Action Step: Continue to assist communities through Chapter 40S

To assuage local concerns about increased educational costs resulting from the development of higher density affordable housing, communities are provided Massachusetts General Laws Chapter 40S, which offers education funds to communities developing a Chapter 40R project. DHCD's significant efforts in this area are ongoing and DHCD will continue to educate communities about Chapter 40S and budgetary concerns relating to a proposed increase to multi-family housing. However, fiscal concerns that are cited to mask discriminatory practices and/or discriminatory motives cannot and will not be tolerated. DHCD will continue to work with the governor's office and legislative leaders to ensure that sufficient appropriations are made to fund the statutory obligations and ensure the timely transfer of funds to cities and towns entitled to 40S payments.

8. Discriminatory Lending Practices Persist in the Private Mortgage Market.

There is a prevalence of subprime lending and predatory lending which disproportionately impact low- and moderate-income households, and particularly households of color.

The FHAP noted while the private lending market is outside the purview of DHCD, it can partner with other agencies to eradicate discriminatory mortgage lending. Partnering could include, but not be limited to, supporting educational and outreach efforts, and to encourage the enforcement of lending regulations, as well as the Massachusetts Predatory Loan Practices Act.

Action Step: Collaborate with banks and lending institutions on fair housing education, and encourage lending to promote compliance with fair housing obligations and to broaden fair housing access

Fair housing access is severely compromised when banks and other lending institutions apply different loan terms based on race/ethnicity, use neighborhood "stability" factors based on racial/ethnic composition to deny loans, and more generously recognize "compensating factors" for White applicants with problematic credit. DHCD will reference relevant studies or reports on home sales and lending practices in Massachusetts as they relate to fair housing when it releases future Analysis of Impediments to Fair Housing reports.

Furthermore, DHCD and its partners can collaborate with realtor associations and

lending institutions in promoting fair housing and lending education. Banks and other lending institutions should be encouraged to operate in underserved areas and for underserved populations, and to otherwise modify their lending practices to comply with fair housing and lending obligations and to promote fair housing access.

9. Lead Paint Contamination Limits Housing Choices for Families with Young Children.

HUD estimates that nationwide, 68 percent of the housing units built before 1940, 43 percent of those built between 1940 and 1959 and 8 percent of those built between 1960 and 1977 have significant lead-based paint hazards.

DPH records indicate that an average of 18,000 units are being inspected, and over 4,000 units are being treated, each year in Massachusetts. More than 90,000 units have already been delead²², including a substantial portion of the state's public housing and assisted inventory. However, with a substantial number of units still "at risk," much work remains.

Continued support for lead paint removal programs and incentives is required to achieve the goal of removing all hazardous lead paint from the housing stock. In the past five years, an estimated 10,000 units annually have been de-leaded, or certified lead-safe as a result of inspections done by state-licensed inspectors. In the public sector, all state family public housing units were de-leaded, at a cost of approximately \$30 million. Further, all substantially renovated "family" (one bedroom or larger) units in DHCD's state and federal housing programs, including the federal HOME and CDBG (also subject to the HUD Lead-Safe Rule), Tax Credit programs, and the state Housing Innovations Fund, Housing Stabilization Fund and Tax Credit programs have been de-leaded to meet Massachusetts requirements. Finally, all publicly assisted leased housing units – in both state and federal programs – are required to be de-leaded whenever children under six are present. These actions closely follow or exceed requirements in the HUD Lead-Safe Rule.

Action Step: Continue administration of Lead Paint Removal Program and increase education efforts

Currently, DHCD administers the Lead Paint Abatement Loan Program, created in 1993, which assists residential property owners in financing lead paint abatement (removal) and containment. The program applies only to owners of housing units where moderate or low income households reside or will reside after abatement or

²² DPH's database goes back to 1990. Nearly 40,000 letters of compliance have been issued to date (July 2004) as have 90,920 letters of initial compliance, which DPH estimates more accurately represents the number of units delead.

confinement. The state's lead program is substantially targeted to high risk communities, particularly to the private rental housing stock in those communities where low- and moderate- income households are likely to reside in units with significant hazards. All of the units where children with elevated blood levels (EBL) are identified are entered in the state case management system, which often results in an Order to Correct being issued. In addition, local code officials trained to perform lead determinations continue to conduct preliminary lead inspections and order full-scale inspections where needed. Finally, targeted public education campaigns continue and state supported lead counselors continue to assist any Massachusetts citizen seeking a lead safe home.

Due to the disparate impact of lead paint hazards on lower income households, and the greater vulnerability of children within those households, continued funding efforts must be made to eradicate lead paint in housing. The disparate impact lead-based paint hazards have on low income families, especially in communities of color pose special concerns. DPH classifies 21 cities – home to more than one third of the state's low income children, and more than three quarters of its Black and Latino children – as high-risk communities for lead-based paint hazards. As such, increased community education regarding lead abatement financing is needed for low and moderate income households residing, or seeking to reside, in privately owned housing.

10. The Massachusetts Housing Market Has Been Characterized by Escalating Prices Over the Last Decade, Limiting Homeownership and Rental Opportunities for Low- and Moderate-Income Households. Developments with Expiring Use Restrictions Place the Current Affordable Housing Stock at Risk.

Inadequate supply of housing, caused in large part by restrictive zoning practices, coupled with ever-increasing construction costs have placed safe, decent, affordable housing opportunities out of reach for many individuals and families, as well as the elderly and those with disabilities.

The FHAP recommended that DHCD continue to advocate to increase the supply of housing through zoning reform and zoning relief to achieve a diverse and adequate supply of housing. Key components include Chapter 40B, (and increased capacity and efficiency at the Housing Appeals Committee) Chapter 40R, and other dense and compact, affordable housing development, particularly near transit. Transit proximity is an important component, since data show that vehicular access by low- and moderate-income families of color is extremely low, and proximity to transportation creates increased housing and economic opportunities. Additionally, national data indicates that higher transportation costs associated with residing in an outlying suburb and continuing to work near a city center outweighs the savings from lower rent or

mortgage payments.²³

Action Step: Continue to support and subsidize the production of affordable housing and community development, with an emphasis on promoting racially and economically integrated housing and neighborhoods

1. *Continue to support incentives and funding for the regionally equitable development of housing that is affordable to low and moderate income households*

Recent reports have indicated that declining job growth and inadequate housing supply, and the appreciation of housing costs, are causing moderate income workers to move out of Massachusetts to seek more affordable housing.²⁴ The New England Public Policy Center recognizes that these trends are not only problematic for middle-income households, but also for very low-income households that are consequently being “squeezed out” of the rental and homeownership markets as moderate income households seek more affordable housing.²⁵

However, from a fair housing access standpoint, the supply of affordable housing for low income households between the moderate and very low-income range must not be forgotten. For example, as discussed in the Data Analysis section of this report, a large number of minorities, large families, and persons with disabilities have incomes between the very low and moderate income range. Large families face the additional difficulty of finding appropriately sized affordable housing. Female-headed households with children and minorities are less likely to own homes than to rent them. Furthermore, many disabled individuals, while perhaps ineligible for certain subsidized housing, may have high disability related costs and therefore are in need of more affordable and accessible housing.

²³ Lipman, Barbara J. *A Heavy Load: The Combined Housing and Transportation Burdens of Working Families*. Center for Housing Policy, October 2006 (finding that in 17 of 28 metro areas, average transportation costs for working families with households incomes between \$20,000 and \$50,000 are as high or higher than housing costs; in the Boston consolidated metro area, 30% of income was spent on transportation compared to 29% on housing).

²⁴ See Bluestone, Barry. *Sustaining the Mass Economy: Housing Costs, Population Dynamics, and Employment*. Center for Urban and Regional Policy at Northeastern University. Draft Report, May 2006. See also, Glaeser, Edward L. *The Economic Impact of Restricting Housing Supply*. Rappaport Institute for Greater Boston, Harvard University. May 2006. See also, Sasser, Alicia, Zhao, Bo, and Darcy Rollins. *The Lack of Affordable Housing in New England: How Big a Problem? Why is it Growing? What Are We Doing About It?* New England Public Policy Center at the Federal Reserve Bank of Boston. Working Paper, 2006.

²⁵ See Sasser et al., supra note 23.

DHCD currently administers various programs that provide funding for rental and ownership housing development and rehabilitation. For example, the HOME program is a federal housing program through which DHCD typically administers funds for rental housing production and rehabilitation, first-time homebuyer housing production and first-time homebuyer development assistance. Rental programs are targeted to households earning less than 60% of area income and homebuyer programs are targeted to households with incomes below 80% of area median income. DHCD also administers the Community Services Block Grant (CSBG) program, which is a federally funded anti-poverty initiative that provides an array of services and activities to encourage self-sufficiency and to make permanent improvements in the lives of low-income families and individuals. Housing related services include affordable housing and homeownership opportunities and assistance to families and individuals at risk of homelessness.

Thus, DHCD will continue to formulate and coordinate funding strategies to increase the supply of affordable housing for low income households throughout the Commonwealth, reserving accessible and appropriately sized units for disabled and larger families respectively. Continued efforts by DHCD and its quasi-public partnership agencies are essential to preserve affordability of use restrictions.

Future development of affordable housing should not be primarily located in, or located proximately to,²⁶ areas of high poverty concentration, often concurrent with high minority concentration, which are likely to have poor education systems²⁷ and stunted job growth. A further discussion of localities in Massachusetts with high poverty and minority concentrations is found in the Data Analysis section of this report. Such housing may serve as a point of transition towards upward mobility for minority and low income families currently living in areas of concentrated poverty. Local preferences are examined, particularly in communities over-represented by White households to ensure that racial/ethnic segregation patterns are not perpetuated or exacerbated.

Program staff need to learn and understand the foregoing data analysis in order to make informed funding decisions that will result in low-income housing tax credit properties that are developed in a diverse range of geographical locations and in varying unit sizes throughout the Commonwealth. Financial set-asides could potentially

²⁶ See supra note 15.

²⁷ See e.g., Lee, Chungmei. *Racial Segregation and Educational Outcomes in Metropolitan Boston*. The Civil Rights Project at Harvard University. April 2004 (report asserting that in the Metropolitan Boston Area, minority segregated schools are high in poverty and unequal in quality, as indicated by lower test scores, lower high school completion rates, and lower shares of certified teachers).

be made for low income tax credit property development in areas with lower poverty and minority concentrations, and should be open to all applicants with limited or no local preference to increase diversity.

2. *Integrate affordable housing in areas that have, or will have through contemporaneous development, adequate community services and attributes*

Housing that is affordable to lower incomes should be integrated in areas that are higher in community services or attributes, such as job opportunities, public transportation, quality education services, and open space, to expand both affordability and equity in housing opportunity. Community services or attributes are crucial to creating equity in quality of life and opportunity for upward mobility. As recently indicated by the Housing Affordability Initiative of the MIT Center for Real Estate, towns with fewer services or attributes (referred to as “amenities”) may be less affordable than they appear because of the costs derived from the insufficiency of such amenities.²⁸

3. *Increase community development in low income areas, as well as in areas achieving desegregation*

Investment in community services and attributes should also be made in areas achieving desegregation, so as to promote equal opportunity among minorities, increase demand, and to preserve and further such desegregation.²⁹ However, if affordable housing is not reserved for lower income households in such areas, an increase in amenities may eventually yield higher housing costs and displacement of minorities and other protected classes.

Nevertheless, many low income households may not or cannot move out of their high poverty areas because they do not have the financial means, the comfort level to live in communities they fear will be unwelcoming or discriminatory (particularly if they are racially dissimilar), or the desire to leave existing family and social networks behind. Thus, community development investments should be made in lower income and amenity areas to increase the potential for expanded job opportunities, improved schools, and better quality housing.

²⁸ See <http://web.mit.edu/cre/research/hai/index.html> for further information.

²⁹ See e.g., Jackson, Tara D. *The Imprint of Preferences and Racial Attitudes in the 1990s: A Window into Contemporary Residential Segregation Patterns in the Greater Boston Area*. The Civil Rights Project at Harvard University. January 2004 (research indicating that Whites are less likely to prefer integration as it approaches the 50% White level, while African Americans and Latinos most prefer integration that is 50% White).

DHCD currently administers various programs that provide funding for community development for low income neighborhoods. For example, the Housing Stabilization Fund (HSF) was created to support comprehensive neighborhood redevelopment efforts, and to help developers and municipalities acquire, preserve and rehabilitate affordable housing. HSF places a special emphasis on reusing foreclosed and distressed properties and on creating affordable homeownership opportunities. The Community Development Action Program (CDAG), funded by the Commonwealth, provides support for publicly owned or managed projects in areas where private investment will not otherwise occur without CDAG. The goal is to stimulate economic development activities that will attract and leverage private investment, create or retain long-term employment and revitalize distressed areas.

The Community Development Block Grant (CDBG) program is funded by the federal government through grants to cities and towns for housing and community and economic development for low and moderate income residents. The housing component of the CDBG program focuses on housing rehabilitation but various other CDBG funded projects have housing related components. The Community Development Fund (CDF) and Housing Development Support Program (HDSP) are components of the Massachusetts CDBG program. CDF provides funding to communities to benefit low and moderate income individuals, remove slums and blight or address a critical community need. HDSP provides funding that can be used for acquisition, rehabilitation, and site work pertaining to housing development, as well as related infrastructure, if 51% of the units are affordable to and occupied by low and moderate income households.

State funding is also available to further housing and community development that benefits low and moderate income families. The Neighborhood Housing Services (NHS) assists residents and public/private entities to reinvest in urban neighborhoods in Boston, Cambridge, Chelsea, Quincy, and Springfield by rehabilitating housing and making it affordable for low and moderate-income families. The Individual Development Account (IDA) Program is a statewide program that will be available to income-eligible households (below 80% of area median income), with a preference given to persons/families residing in state-subsidized housing with the goal of enabling them to save to buy a home and transition out of subsidized housing. IDAs are dedicated, matched savings accounts that are used to purchase a particular asset – often, a first home. IDAs, when combined with financial literacy education and program support services, offer powerful opportunities to break the cycle of poverty and contribute to greater economic independence.

4. *Continue to Advocate Statewide to Mitigate Zoning and Affordability Barriers*

DHCD will continue to conduct extensive technical assistance for communities and organizations. For example, DHCD is on the board of directors for the Citizen Planner Training Collaborative, which conducts workshops on Chapter 40B, 40R, inclusionary housing, planned production, and other zoning related issues. Through DHCD's Local Initiative Program (LIP), DHCD provides technical assistance and oversight in a variety of areas, including affirmative fair marketing and long-term affordability, of qualifying comprehensive permit projects and local action units. DHCD has also developed an online "Sustainable Community Planning Toolkit" offering guidance and resources for communities to utilize in creating affordable housing plans and in creating lotteries and affirmative fair marketing plans. DHCD was recognized for its efforts in mitigating zoning and affordability barriers on August 10, 2006, when the US Department of Housing and Urban Development today presented the Massachusetts Department of Housing and Community Development with the *Robert L. Woodson, Jr. Award* for reducing burdensome regulations that unnecessarily inflate the cost of housing. Massachusetts was recognized by HUD as a national model in the effort to reducing unnecessary, outdated, and duplicative regulations that put the cost of housing out of reach for many Americans.

5. *Affirmative Marketing Plans*

Affirmative fair housing marketing plans are an important mechanism for attracting racially, ethnically, and economically diverse households to areas where they are less likely to rent or buy. Moreover, federal regulations require fair housing marketing plans under FHA subsidized and unsubsidized housing programs. Affirmative marketing plans must appeal to tenants and buyers of all races, nationalities, colors, religions, sexes, sexual orientations, disabilities, income sources, and familial, marital, and veteran statuses. They are typically publicized through minority publications and media outlets. Factors such as local demographic composition should inform all fair housing marketing plans.

DHCD continues to require affirmative fair marketing plans in applicable subsidy programs that it administers. DHCD and its partners will continue to monitor Chapter 40B developments so that they are not discriminatory in their selection criteria, and that they comply with affirmative fair marketing obligations and promote equal housing opportunity in compliance with fair housing laws. DHCD critically analyzes predominantly White communities that seek through local preference to favor local residents in the allocation of their 40B housing inventory, disallowing marketing plans that potentially limit opportunities for diversity and transgression of fair housing laws.

11. Inadequate Mobility Inhibits Achievement of Fair Housing Objectives, and Language

Barriers Faced by Recent Immigrants Create an Increased Challenge to Mobility.

The FHAP noted that residency preferences are exclusionary and may have a discriminatory impact. However, although they may inhibit mobility among communities where affordable housing opportunities exist, they be necessary for projects to be approved locally. Furthermore, misunderstandings about available housing opportunities pervade, especially within low-income communities predominantly composed of people of color or recent immigrants. Inadequate transportation options exist in suburbs where affordable housing opportunities exist within high-performing school districts.

Acknowledging that residency preferences are often prerequisite to local approval of affordable housing developments, the FHAP recommended that DHCD uphold the Low Income Housing Tax Credit program requirements that disallow residency preferences.

In order to dispel misunderstandings about available housing opportunities, increased technical assistance, outreach, and education relative to the availability of affordable housing opportunities is essential. Particularly in high-poverty areas where low-income people of color and those with language barriers are concentrated, education regarding what income levels and credit and employment histories (as well as other information) are required to access affordable rental and homeownership must be available. Studies have shown that such populations are less likely to perceive that they will be approved for a mortgage or will be eligible to purchase a home, even with appropriate income levels and credit and employment histories. Dispelling such notions will create mobility and will enhance opportunities for members of protected classes that previously perceived that they were foreclosed from housing opportunities (and other socioeconomic opportunities which attend them).

Action Step: Encourage housing counseling in programs that DHCD oversees regarding rental, sales, and financing opportunities in areas with lower concentrations of poverty and segregation, with attention to linguistically isolated households

Housing counseling and outreach on affordable housing in diverse areas is an important method for limiting and redressing segregation. To encourage results similar to those of the MTO project (see pg. 24), DHCD monitors the housing counseling efforts of local housing authorities and regional housing agencies it contracts with to ensure that tenants receiving rental subsidies are informed of housing opportunities in areas that are lower in poverty and segregation. Counseling should include information about community and social services in new locations, including services for disabled persons, as well as potential sources for assistance with moving related expenses. Counseling

efforts are of particular importance in high poverty/high minority concentrated areas.

Currently, housing counseling is largely undertaken by Housing Consumer Education Centers ("HCECs") which are located throughout Massachusetts in Boston, Framingham, Gardner, Hyannis, Kingston, Lowell, Pittsfield, Springfield, and Turner Falls, Massachusetts. HCECs provide information on a variety of topics to tenants, landlords, homeowners, and prospective buyers, including information on tenant rights and responsibilities, fair housing, Section 8 information for persons with disabilities, buying and financing a home, obtaining affordable homeownership, and protecting against lead paint in the home. Information is also accessible online at <http://www.masshousinginfo.org>.

DHCD will evaluate resources available to housing consumers (provided both within the agency and through other providers) and will formulate an implementation plan to meet consumer needs if gaps exist, or create a new resource. We envision an online resource to provide fair housing information to consumers so that tenants and potential homeowners are informed of counseling opportunities not only with respect to tenant fair housing rights, finding accessible housing and receiving assistive technology, renting and buying in geographically diverse affordable housing markets, but also with respect to pre- and post-purchase homeownership financing, and avoiding steering, redlining, and predatory lending practices and other discriminatory sales and lending practices. Our goal is to provide resources to make counseling on affordable homeownership should include the Section 8 Homeownership program, as well as the Home Modification program for persons with disabilities.

Given recent immigration trends in Massachusetts, it is essential that linguistically isolated households receive fair access to housing programs, including counseling and outreach, in their language of origin to the extent feasible. Outreach to linguistically isolated households will be guided by, *inter alia*, HUD's regulations on Title VI's prohibition against national origin discrimination for federal assistance recipients. HUD has offered a four-part reasonableness test for obligations of entities receiving federal financial assistance as follows: 1) the number or proportion of LEP (limited English proficiency) served or encountered in the eligible service population; 2) the frequency with which LEP individuals come into contact with the program; 3) the nature and importance of the program, activity, or service provided by the program; and 4) the resources available to the recipient and costs.³⁰

³⁰ Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Fed. Reg., December 19, 2003.

Action Step: Evaluate Local Selection Preferences for Potential Discriminatory Impacts

Data must be provided with respect to housing applicants to determine whether local selection preferences by housing authorities are yielding discriminatory effects. Local selection preferences by housing agencies are permitted as a method for meeting local needs.³¹ However, preferences must not yield discriminatory effects which violate state and federal fair housing laws.³² Local selection preferences in predominantly White communities increase the risk of having a disparate impact on minorities, and are closely monitored.

Discriminatory effects may be shown by employing "facts and statistics that 'adequately capture[d]' the impact of the city's plans on similarly situated members of protected and non-protected groups."³³ As outlined by the Citizens' Housing and Planning Association, one statistical method is standard deviation statistical analysis, or calculating the extent to which actual outcomes deviate from expected outcomes.³⁴ Another method for evaluating the existence of discriminatory impact is the "four-fifths rule," or the standard that a selection rate of a group that is less than 80% of the selection rate of the group with the highest selection rate is evidence of disparate impact.³⁵ In *Langlois v. Abington Housing Authority*, a Massachusetts court found that fair housing laws had been violated by applying the "four-fifths rule," where "a selection rate for any race, sex, or ethnic group which is less than four-fifths (or eighty percent)

³¹ *Meeting Local Housing Needs: A Practice Guide for Implementing Selection Preferences and Civil Rights Requirements in Affordable Housing Programs*. Citizens' Housing and Planning Association. September 2004. (citing 42 U.S.C. §1437d(c)(4) (federal public housing); 42 U.S.C. §1437f(o)(6)(A)(ii) (Section 8 Housing Choice Voucher Program); *MassHousing Tenant Selection Regulations*, Section III(E); *Guidelines for Housing Programs in which Funding is Provided Through a Non-Governmental Entity* ("40B NEF Guidelines"). Massachusetts Department of Housing and Community Development.

³² *Id.* (citing 24 C.F.R. §5.105(a); *Multi-Family Occupancy Handbook*, par. 4-6(C), pg. 4-12; M.G.L. ch. 121B, § 32; *LIP Guidelines*, pg. 14; *MassHousing Tenant Selection Regulations*, section III(E); 760 C.M.R. § 47.08; 760 C.M.R. § 33.06(1) (local housing agencies must "engage in and promote fair housing and tenant selection practices so as to prevent discrimination and segregation and to remedy the effects of past discrimination"))).

³³ *Id.* (citing *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (Title VI Manual) (quoting *New York Urban League*, 214 F. 3d 65, 70)).

³⁴ *Id.* (citing *Castaneda v. Partida*, 430 U.S. 482 (1977) (jury selection case)).

³⁵ *Id.* supra note 9 (citing e.g., *Langlois v. Abington Housing Authority*, 234 F. Supp. 2d 33 (D. Mass 2002)).

of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of disparate impact.”³⁶

Local housing authorities must collect and analyze protected class data to determine the existence of any discriminatory effects on protected classes resulting from tenant selection practices. Findings are required to be submitted to DHCD for evaluation. DHCD analysis will include a determination as to whether the minority presence in LHA programs are significantly below the percentage of minorities in the general population of the city or town or in the general population of the applicable (primary) statistical area, whichever is greater. If minorities are found to be under-represented, DHCD will require the LHA to develop and implement an appropriate written fair marketing plan.

12. Incorporate Fair Housing Principles in DHCD Programs and Activities. Greater Leadership is Required to Address Housing Discrimination.

The FHAP recommended that DHCD, through education and outreach, demonstrate the value and need for affordable housing, and particularly family housing and special needs housing. Additionally, it should disseminate data regarding the need for and impact of family, special needs, and age restricted housing.

The FHAP noted that it is essential to build consensus for fair housing practices and support for a diversity of housing stock and integrate the Fair Housing Mission Statement and Principles into programs. Such consensus building should include demonstrating the value and need for family and special needs housing, and to disseminate data relative to that need and its impact. In addition, the FHAP suggested that there has been inadequate consideration of fair housing principles in publicly funded programs and activities, such as Commonwealth Capital and the Principles of Sustainable Development. Since the FHAP was convened, both programs (and others) require demonstration (by specific example) of consistency with fair housing principles.

Action Step: Promote regional equity and fair housing principles by linking housing, community, and transportation planning and development

1. *Foster regional equity and fair housing principles through subsidized housing funding, planning, and development*

In order to achieve regional equity in housing and housing related opportunities and to avoid the creation or perpetuation of segregation and concentrated poverty, subsidized housing should be included in areas that are lower in poverty (See the Data Analysis

³⁶ Id.

section of this report for further discussion of high and low poverty areas). Such areas are more likely to have greater amenities like quality schools and other opportunities for upward mobility. Due to the connection between poverty and race/ethnicity discussed in the Data Analysis section of this report, poverty concentration must also be carefully considered when planning future development. Methods for achieving equity in subsidized housing include creating subsidized housing in desegregated and suburban areas, and monitoring the locations where tenant based (mobile) vouchers are used for clustering by race/ethnicity, income, and other protected classes to inform future development. Affirmative fair marketing to minority households and communities is imperative to ensure their opportunity to benefit from such regionally distributed housing.

As indicated by the Pioneer Institute for Public Policy Research in its 2001 report, Massachusetts has among the nation's highest per capita inventories of subsidized housing.³⁷ The report cites HUD's most recent figures for Massachusetts: in 1998 there were 158,750 units of subsidized housing for a population of 6,144,401. Massachusetts figures are largely influenced by the relatively high level of subsidized housing in Boston: Boston had 75.3% more subsidized units per capita even though it had a 29.1% lower poverty rate tract than the average city of similar size in 1998.³⁸

Compared to the average location in Massachusetts outside Boston, which had 1.170 public housing units per 100 people and 1.422 Section 8 units per 100 people, Boston had a greater number per 100 people of public housing units (3.113) and Section 8 units (3.683). Higher than average subsidized housing rates could also be found in cities like Cambridge, Lowell, Springfield, and Worcester.³⁹ HUD also found similar patterns on the national level of low income tax credit (LIHTC) units concentrated in central cities and metropolitan areas. In its 1996 report, HUD concluded that 54% of LIHTC units were located in central cities, and 26% were located in non-central city metro areas.⁴⁰

³⁷ Husock, Howard and David J. Bobb. *Build More or Manage Better? Public Housing in Boston and Massachusetts*. Pioneer Institute for Public Policy Research. White Paper No. 16. July 2001.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Development and Analysis of the National Low-Income Housing Tax Credit Database*. Prepared by Abt Associates Inc. for the U.S. Department of Housing and Urban Development Office of Policy Development and Research. July 1996. It was also noted in this report that 65% of LIHTC units were located in low income neighborhoods, 38% were in areas of concentrated poverty, and 40% were in neighborhoods with high minority concentrations compared to minority representation in the MSA or county.

In a 2000 report, HUD revealed findings relative to LIHTC properties in five MSAs (Boston, Kansas City, Miami, Milwaukee, and Oakland). The report revealed that 72% (n=39) of said properties were located in central cities; 46% were located in high poverty (30% or higher) neighborhoods; 49% were located in areas that were 80-100% minority; 88% were located in neighborhoods that were greater than 20% minority; and 40% were located in high-poverty, city, and minority (>40%) neighborhoods.⁴¹ These findings also revealed a significant difference between nonprofit sponsors (n=22) and for-profit sponsors (n=17), where nonprofit sponsors were more likely to be located in neighborhoods high in poverty and minority presence.⁴²

Additionally, Abt Associates, Inc, recently issued a report revealing the percentage of LIHTC family units outside of highly concentrated minority areas. It stated that 12.5% of LIHTC family units (for projects placed in service 1995 to 2003) in Massachusetts were in census tracts with minority percentages less than the percentage for the metropolitan area.⁴³ However, this percentage varied by location: in Lawrence in the Massachusetts portion of the MA—NH PMSA it was 45.9%; in Worcester in the Massachusetts portion of the MA—CT PMSA it was 41.1%; in the Springfield MSA it was 12.3%; in Boston in the Massachusetts portion of the MA—NH PMSA it 6.7%; and in Lowell in the Massachusetts portion of the MA—NH PMSA was only 3.2%.⁴⁴

The data suggests there is a need for the supply of subsidized housing to be dispersed across a broader geographical range in Massachusetts in order to foster integrated housing patterns. The 2001 Pioneer Institute for Public Policy Research report concluded that Massachusetts and Boston in particular had higher rates of vacancy and over-housing (units with more bedrooms than residents) in subsidized housing compared to other similarly populated geographical areas.⁴⁵

⁴¹ *Assessment of the Economic and Social Characteristics of LIHTC Residents and Neighborhoods*. Prepared by Abt Associates Inc. for the U.S. Department of Housing and Urban Development Office of Policy Development and Research. Final Report, February 28, 2000.

⁴² Id.

⁴³ *Are States Using the Low Income Housing Tax Credit to Enable Families With Children to Live in Low Poverty and Racially Integrated Neighborhoods*. Prepared by Abt Associates, Inc. for the Poverty and Race Research Action Council and the National Fair Housing Alliance. July 28, 2006 (Source: HUD National LIHC Database for projects placed in service 1995 to 2003, and Census 2000).

⁴⁴ Id.

⁴⁵ Supra note 10.

The development of new subsidized and use-restricted housing outside of Boston and other high minority and poverty concentrated areas is recommended to simultaneously achieve economic efficiency and regional equity in housing. Consideration of such areas should not only include the demographics of a particular neighborhood or municipality, but also the demographics of surrounding areas, to mitigate the migration of existing patterns from one location to another. For example, integrated neighborhoods may be more likely to achieve stability the greater their distance from a metropolitan area's primary area of minority concentration.⁴⁶

To complement subsidized rental development in low poverty areas, and to serve as a bridge towards upward mobility, more homeownership opportunities for low income households should also be created in non-poverty concentrated areas, as well as areas undergoing community revitalization and development relating to jobs, school improvements, and transportation. Currently, DHCD administers the Commonwealth's allocation of federal HOME funds for first-time buyer housing production and development for households with incomes below 80% of the median area income. Funding for the state's Soft Second Loan Program for low and moderate income households is utilized to further fair housing opportunity and to reduce the risks of predatory lending that such households (which are disproportionately represented by minorities) face.

Although planning for new housing development in poverty concentrated areas should be examined with a critical eye,⁴⁷ it should not necessarily be disregarded. Low-income neighborhoods may be appropriate settings for further affordable or mixed income housing development if there is substantial need, opportunity for rental mobility, contemporaneous planning for community development and other activity such as homeownership opportunity, and marketing towards working families above the poverty level.⁴⁸

2. *Support housing mobility towards low poverty areas*

⁴⁶ See de Souza Briggs, Xavier. "More Pluribus, Less Unum?" 2005. In *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*, edited by Xavier de Souza Briggs, pp. 17-41. Washington, D.C.: Brookings Institution Press (citing Ellen, Ingrid Gould. 2000. *Sharing America's Neighborhoods: Prospects for Stable Racial Integration*. Harvard University Press.

⁴⁷ See supra note 9 (citing HUD's project based Section 8 site selection standards).

⁴⁸ Id. (also citing the LIHTC federal statutory requirement (26 U.S.C. § 43) that states adopt site preferences for development in low income areas only if the housing "contributes to a concerted community revitalization plan").

Mobile rental vouchers are an important tool for de-concentrating poverty and segregation on the basis of race/ethnicity. The U.S. Department of Housing and Urban Development began studying the benefits of housing mobility to lower poverty areas through the Moving to Opportunity (MTO) project in Baltimore, Boston, Chicago, Los Angeles, and New York in the fall of 1994. The MTO project was undertaken in response to studies indicating an increase in the concentration of poverty⁴⁹ and the persistence of segregation by race and income in metropolitan areas across the United States, as well as the negative effects of concentrated poverty on children even when controlling for family income and background characteristics.⁵⁰ The MTO project was designed to measure the impact of Section 8 voucher residence in non-segregated and non-poverty concentrated areas on outcome measures such as health and safety.⁵¹ Public housing residents were used as a comparison group.

According to the 2000 report, in the Boston MTO project, fewer families elected to use vouchers restricted to low poverty areas and accompanied by housing counseling (48%) than those who elected to use Section 8 Vouchers without such conditions (62%). However, the report concluded that the low poverty area restriction appeared to be the greater cause of the lower participation rate in the latter group than the housing counseling.

The major positive findings of the MTO project in Boston, according to the 2000 report, indicate that households receiving vouchers that moved, in comparison to households in public housing, were less likely to live in higher poverty areas and experienced positive effects such as increased safety, improved health among household heads, and reduced behavioral problems among boys. Voucher holders restricted to low poverty areas that moved were most likely to remain in suburban, low-poverty (poverty rate below 10%)

⁴⁹ Katz, Lawrence F. et al. *Moving to Opportunity in Boston: Early Results of a Randomized Mobility Experiment*, October 8, 2000. Between 1970 and 1990, the percentage of poor persons in metropolitan areas living in census tracts with a poverty rate of 40 percent or more increased from 12% to 18% between 1970 and 1990 (citing Jargowsky, Paul A., "Take the Money and run: Economic Segregation in U.S. Metropolitan Areas," *American Sociological Review*, LXI (1996)).

⁵⁰ Id. (citing Cutler, David M. and Edward L. Glaeser, "Are Ghettos Good or Bad?" *Quarterly Journal of Economics*, CXII (1997)); Brooks-Gunn, Jeanne, Greg J. Duncan, Pamela K. Klebanov, and Naoimi Sealand, "Do Neighborhoods influence Child Adolescent Development?" *American Journal of Sociology*, XCIX (1993)).

⁵¹ Id. Since 1994, the project has been operating in Boston, Baltimore, Chicago, Los Angeles, and New York. The project is comprised of families with children, who are eligible based on their residence in public housing or project-based Section 8 in poverty areas, and designated to either a Control group, a Section 8 Comparison group, or an Experimental group. The Control group did not receive tenant based rental assistance vouchers, while the Comparison group did. The Experimental group received rental vouchers restricted to low poverty areas, and in addition, received housing counseling on finding a home in a new neighborhood.

neighborhoods and have fewer specified health and crime related injuries among their children.⁵²

In Massachusetts, minority households have also benefited from the use of Section 8 vouchers in lower minority concentrated areas through the Community Choice Voucher Program (CCVP), administered by the Metropolitan Boston Housing Partnership (MBHP). CCVP is a federally funded initiative to assist minority families in Boston that wish to relocate to more diverse communities.⁵³ The program resulted from a 1978 lawsuit by NAACP against HUD (discussed in the legal framework section of this report). In 1991, Judge Skinner issued a consent decree creating 500 new rental vouchers for potential use in diverse communities. In 2002, MBHP received funding to manage 100 of the "Skinner vouchers." By the end of 2004, 17% of the 89 families originally receiving Skinner vouchers leased in qualified areas (neighborhoods with less than 41% minority residents), while 61% (n=70) of the 114 families leased under the CCVP program as of March 3, 2002 were leased in qualifying areas.⁵⁴ By the end of the third quarter of the 2006 fiscal year, 72 families (including 13 original Skinner voucher participants) were housed in qualifying locations in twenty-eight different neighborhoods.⁵⁵

Thus, minority families participating in CCVP currently have more success than the original Skinner voucher recipients in moving to diverse neighborhoods, likely due to the extensive support services it provides. CCVP assists its clients by conducting housing search or relocation workshops, providing referrals to support services and assisting in security deposits, holding fees and realtor fees. CCVP also conducts outreach to property owners.

However, MBHP has identified several obstacles to achieving further success, including decreased Section 8 payment standards, community support, and transportation. It notes that many families hesitate to move away from their support networks, and attempts to alleviate this problem by providing families with personalized resources on schools, local community centers, and MBTA information. Section 8 payment standards are a formidable obstacle: many families moved to Dorchester and Roxbury in search of more reasonable rents as three and four bedroom apartments were less affordable in the majority of the CCVP communities.

⁵² Id.

⁵³ See <http://www.mbhp.org/tenants/ccvp/towns.htm> for more information on the CCVP housing locations.

⁵⁴ Data provided by the Metropolitan Boston Housing Partnership October 18, 2006.

⁵⁵ Id.

Based on the findings and the results of the MTO and Skinner/CCVP voucher programs in Boston, housing counseling and support services appear to be important facilitators of sustaining mobility among minority households away from lower income neighborhoods. The MTO study offers additional insight on the benefits of such mobility. Continued support and furtherance of mobility and housing counseling regarding diverse neighborhoods are needed to ensure similar successes for more families in Massachusetts. Pursuant to the shared goal of affirmatively furthering fair housing, all administering agencies in Massachusetts advocate for higher federal payment standards to engender success in the CCVP program and other mobility efforts.

4. *Promote Equity in Public Transportation Access*

Limited access to public transportation has a disproportionate impact on racial and ethnic minorities and lower income households with respect to housing choice and employment opportunity. Identification of areas of potential public transportation routes that link areas of job growth to minority concentrated and lower income neighborhoods is needed.

The Urban Land Institute has offered the recommendation that “the majority of the housing units that will be built in the greater Boston region during the next decade should be concentrated within reasonable walking distance of existing and planned MBTA rapid transit and commuter rail stations.”⁵⁶ However, such housing development should be oriented around existing and planned transit in a fair manner so as to avoid creating and perpetuating the segregation of racial/ethnic minorities, the elderly and disabled, and lower income individuals. Furthermore, the Urban Land Institute’s recommendation that cities, towns, and developers foster transit oriented development near existing and planned MBTA stations should be carefully devised in such a fair manner as well. Transit oriented development should also link areas of job growth to areas of low income affordable housing, so as to expand the geography of job opportunity. Finally, developing transit in communities that have reached, or are close to reaching, levels of desegregation should be used as a mechanism to continue encouraging desegregation.

Currently, state policy promotes the funding of transportation projects that relate to smart growth principles and/or housing development. The Commonwealth’s 20-year transportation plan, *A Framework for Thinking-A Plan for Action*, includes a call for system preservation, operational efficiency and cost-effectiveness, mobility, safety, and

⁵⁶ *On the Right Track: Meeting Greater Boston’s Transit and Land Use Challenges*. Report and Recommendations of the Urban Land Institute Boston District Council. May 2006.

security, sustainable development, and mindfulness of “geographic equity, environmental justice, and other standards of justice” with respect to major infrastructure projects. The 20-year plan also notes that transportation agencies “must always be mindful of the special mobility needs of unique constituencies, including elders and children, persons with disabilities, economically and historically disadvantaged persons, and persons with language barriers.” Members of the Massachusetts Smart Growth alliance and fair housing advocates have voiced the need for significant transportation investment in minority communities west of I-495 as a component of the geographic equity aspect of the plan.

Noting insufficient transit options in suburban locations, the FHAP recommended that DHCD encourage smart growth development near mass transit, citing in particular that the MGL c. 40R regulations affirmatively acknowledge fair housing requirements. DHCD concurs with this recommendation and seeks to advance transit-oriented development (TOD) through the TOD bond program as well as MGL c. 40R, 40B, and other housing development funding programs, and will more fully integrate the principles of fair housing (as developed by the FHAP) throughout its housing programs.

DHCD has partnered with the Executive Office of Transportation and the Office for Commonwealth Development to broaden transportation access by forming the Transit-Oriented Development (TOD) Infrastructure and Housing Support Program, which funds pedestrian improvements, bicycle and parking facilities, and housing projects within a ½ mile of transit stations. DHCD should continue to explore methods for linking transportation to existing and future low, very low, and extremely low income housing. DHCD may also consider the benefit of individual public transportation subsidies, in connection with housing subsidies, for individuals reliant on public transportation to employment sites.